

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2007

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

W.P.NO.36592 OF 2002

and

WP.MP.Nos.55028 of 2002 and 2005 of 2007

S.Subaitha Banu

...Petitioner

Vs.

1.Correspondent,
Quaid-E-Millet Higher Secondary School,
Puliangudi,
Tirunelveli District.

2.District Educational Officer,
Thenkasi,
Trunelveli District.

3.Director of School Education,
Chennai 600 006.

4.Government of Tamil Nadu represented by
its Secretary,
Department of Education,
Fort St.George,
Chennai 9.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus as stated within.

For Petitioner: Mr.R.Kamraj

For Respondents: Mr.N.Senthil Kumar

R.2 to R.4

Additional Government Pleader

ORDER

Invoking the writ jurisdiction of this Court, the petitioner seeks to issue a writ of Certiorarified Mandamus to quash the order of the second respondent dated 12.08.2002 in respect of the petitioner alone and direct the second respondent to approve the appointment of the petitioner as Headmistress with effect from 01.01.1995 with attendant benefits in accordance with G.O.Ms.No.525 , Education dated 29.12.1997.

2. The affidavit filed in support of the petition is perused.

3. The Court heard the learned counsel on either side.

4. It is not in controversy that the petitioner was appointed as B.T. Grade Middle School Headmistress of Musthafa Middle School, Thenkasi, on 18.01.1989 in the Middle School BT HM pay scale of Rs.780-35-1025-40-1385 and it was also revised at the time of V Pay Commission pay scale and thereafter by order dated 24.8.1991, the Chief Educational officer redeployed the petitioner to Quiad-E-Millat Mohamed Ismayil Middle School, Puliangudi as B.T. Grade Headmistress. The said school was upgraded as a High School with effect from 01.01.1995 as per the orders of the Joint Director of School Education and the petitioner was appointed as in-charge Headmistress of upgraded High School with effect from 1.1.1995 until the post of Headmaster is sanctioned to the upgraded High School. At that time, the petitioner was drawing the pay of Rs.2,900/- in the Middle School BT Headmistress pay scale of Rs.1640-60-26-75-2900. The pay of the petitioner was further revised in 1998 as Rs.7700/- in the pay scale of Rs.5900-200-9900. While the matters stood thus, the second respondent has passed the impugned order dated 12.08.2002 issuing instructions to the first respondent to reduce the pay of the petitioner from the pay scale of Middle School BT Headmistresses to that of BT Assistant and to recover from the petitioner the excess of salary already paid. Under such circumstances, the writ petitioner has brought forth this writ petition for the relief as extracted above.

5. Learned counsel for the petitioner reiterated the grounds on which the impugned order is assailed.

6. The Court heard the learned counsel on either side.

7. After careful consideration of the rival submissions made, this Court is of the considered opinion that the relief as prayed for has got to be granted. It is not in controversy that the petitioner, who originally joined service as BT Grade teacher in the middle School as Headmistress in the year 1989, was subsequently transferred and redeployed in the school in question. When she was serving there, the said School was actually upgraded as High School with effect from 1.1.1995 and she was also appointed as in charge Headmistress of the upgraded High School with effect from 1.1.1995. Accordingly, her scale of pay was revised and the pay of the petitioner was further revised in 1998. All these factual positions are not in controversy. The impugned order was passed by the second respondent issuing directions to the first respondent to reduce the pay of the petitioner from the pay scale of Middle school BT Headmistress to that of B.T. Assistant and also to recover from the petitioner, the excess of salary already paid. Now at this juncture, it is pertinent to point out that the said school was upgraded as High School with effect from 1.1.1995 by the orders of the Joint Director of School Education and the petitioner was appointed as in charge Headmistress of the upgraded High School with effect from 1.1.1995. It is not in controversy that she has been in service as in charge Headmistress of the upgraded High School with effect from

1.1.1995. Further it is pertinent to point out that the respondent relied upon G.O.Ms.No.1529 on 13.11.1990 for issuance of such a direction. It remains to be stated that it has been subsequently superseded by G.O.Ms.No.525 Education dated 29.12.1997 and it was found to be correct by the decision of this Court in W.P.No.21333 of 2003 and it has to be implemented. If subsequently G.O.Ms.No.525 Education dated 29.12.1997 is to be implemented, then automatically the orders passed by the second respondent, pursuant to the earlier G.O.1529 Education dated 13.11.1990, has to be quashed without any hesitation.

8. For the reasons stated above, when the school was upgraded as High School with effect from 1.1.1995 and the petitioner was actually working as in-charge Headmistress in the said school from the date onwards and revised payments have been made and G.O.Ms.No.1529 dated 13.11.1990 is given effect to and what has been paid to her was correct and in the circumstances, the pay scale could not be disturbed and hence the order of the first respondent is quashed in all respects.

9. With the above observation, the writ petition is disposed. of. No costs. Consequently, WP.Mp.Nos.55028 of 2002 and 2005 of 2007 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

VJY

To

1. Correspondent,
Quaid-E-Millet Higher Secondary School,
Puliangudi,
Tirunelveli District.
 2. District Educational Officer,
Thenkasi,
Tirunelveli District.
 3. Director of School Education,
Chennai 600 006.
 4. The Secretary to Government,
Department of Education,
Fort St. George,
Chennai 9.
- + 1 CC To Mr. R.Kamaraj, Advocate SR NO.57332

W.P.NO.36592 OF 2002

and

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2007

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